

**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

TERRANCE ALLEN KING,

Plaintiff,

v.

ALLISON, *et al.*,

Defendants.

Case No. 1:23-cv-00681-BAM (PC)

ORDER DENYING MOTION TO APPOINT  
COUNSEL  
(ECF No. 12)

ORDER GRANTING MOTION TO AMEND  
COMPLAINT  
(ECF No. 11)

Plaintiff Terrance Allen King (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff’s complaint has not yet been screened.

On May 18, 2023, Plaintiff filed a first amended complaint, a motion to appoint counsel, and a motion for preliminary injunction and/or protective order. (ECF Nos. 11–13.) Plaintiff filed a declaration in support of the motion to appoint counsel on May 19, 2023. (ECF No. 14.) The motion for preliminary injunction and/or protective order will be addressed by separate findings and recommendations. The Court considers the remaining filings below.

**I. Motion to Appoint Counsel**

Plaintiff requests appointment of counsel because he is unable to afford counsel, he has been unable to obtain pro bono counsel, his imprisonment and confinement in punitive segregation limits his ability to litigate and investigate his claims, the issues in the case are extremely complex and contain over 20 different legal claims each involving a different set of defendants, and Plaintiff is a mental health patient at the CCCMS level of care. (ECF Nos 12, 14.) Plaintiff further contends that the case involves issues that may require expert testimony,

1 discovery of documents, and depositions of a number of witnesses, and Plaintiff has only a high  
2 school education and no legal education. (ECF No. 14.)

3 Plaintiff does not have a constitutional right to appointed counsel in this action, *Rand v.*  
4 *Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *rev'd in part on other grounds*, 154 F.3d 952, 954  
5 n.1 (9th Cir. 1998), and the court cannot require an attorney to represent plaintiff pursuant to 28  
6 U.S.C. § 1915(e)(1). *Mallard v. U.S. Dist. Court for the S. Dist. of Iowa*, 490 U.S. 296, 298  
7 (1989). However, in certain exceptional circumstances the court may request the voluntary  
8 assistance of counsel pursuant to section 1915(e)(1). *Rand*, 113 F.3d at 1525.

9 Without a reasonable method of securing and compensating counsel, the Court will seek  
10 volunteer counsel only in the most serious and exceptional cases. In determining whether  
11 “exceptional circumstances exist, a district court must evaluate both the likelihood of success on  
12 the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the  
13 complexity of the legal issues involved.” *Id.* (internal quotation marks and citations omitted).

14 The Court has considered Plaintiff’s request, but does not find the required exceptional  
15 circumstances. Even if it is assumed that Plaintiff is not well versed in the law and that he has  
16 made serious allegations which, if proved, would entitle him to relief, his case is not exceptional.  
17 This Court is faced with similar cases filed by prisoners who are proceeding *pro se* and *in forma*  
18 *pauperis* almost daily. Many of these prisoners also have limited access to witnesses and  
19 discovery and are receiving mental health treatment. These litigants also must conduct legal  
20 research and litigate their cases without the assistance of counsel.

21 Furthermore, at this stage in the proceedings, the Court cannot make a determination that  
22 Plaintiff is likely to succeed on the merits. Plaintiff’s complaint has not yet been screened to  
23 determine whether it states cognizable claims upon which it may proceed, and based on a review  
24 of the record in this case, the Court does not find that Plaintiff cannot adequately articulate his  
25 claims.

## 26 **II. Motion to Amend**

27 Plaintiff has also filed a first amended complaint which appears to add additional claims  
28 to the original complaint. (ECF No. 11.) Although Plaintiff has not filed a motion requesting

1 leave to file an amended complaint, the Court will construe the filing as a motion to amend the  
2 complaint.

3 Under Rule 15(a) of the Federal Rules of Civil Procedure, a party may amend the party's  
4 pleading once as a matter of course at any time before a responsive pleading is served.

5 Otherwise, a party may amend only by leave of the court or by written consent of the adverse  
6 party, and leave shall be freely given when justice so requires. Fed. R. Civ. P. 15(a). "Rule 15(a)  
7 is very liberal and leave to amend shall be freely given when justice so requires."

8 *AmerisourceBergen Corp. v. Dialysist West, Inc.*, 465 F.3d 946, 951 (9th Cir. 2006) (citation and  
9 quotation omitted). However, courts "need not grant leave to amend where the amendment:  
10 (1) prejudices the opposing party; (2) is sought in bad faith; (3) produces an undue delay in  
11 litigation; or (4) is futile." *Id.*

12 In considering the relevant factors, the Court finds no evidence of prejudice, bad faith,  
13 undue delay in litigation, or futility. Plaintiff's complaint has not yet been screened and no  
14 defendants have been served or have appeared in this action. Accordingly, Plaintiff's motion to  
15 amend shall be granted. The first amended complaint is accepted for filing and will be screened  
16 in due course.

### 17 **III. Order**

18 Accordingly, IT IS HEREBY ORDERED that:

- 19 1. Plaintiff's motion to appoint counsel, (ECF No. 12), is DENIED, without prejudice;
- 20 2. Plaintiff's motion to amend, (ECF No. 11), is GRANTED; and
- 21 3. Plaintiff's first amended complaint will be screened in due course.

22  
23 IT IS SO ORDERED.

24 Dated: May 22, 2023

25 /s/ Barbara A. McAuliffe  
26 UNITED STATES MAGISTRATE JUDGE  
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